S
324.786
C106r
1977

STATE DOCUMENTS

State of Montana

MT 377

REPORT TO

THE GOVERNOR AND LEGISLATURE

FOR

FISCAL YEAR 1977

Prepared and Published by
Commissioner of Campaign Finances and Practices

JOHN N. HANSON
P.O. BOX 39 - CAPITOL STATION
HELENA, MONTANA 59601
PHONE: 406-449-2942

Montana State Library
3 0864 1004 2486 3

PREFACE

Contained herein is a report to the Governor, the Legislature, and the citizens of the State of Montana detailing the activities of the Office of Commissioner of Campaign Finances and Practices during the preceding fiscal year. This report, covering the period from July, 1976 through June 1977, is compiled and published pursuant to the provisions of Section 23-4786(15), R.C.M. 1947.

Additional information and all records maintained pursuant to the provisions of the Campaign Practices Act (Title 23, Chapter 47, R.C.M. 1947) may be obtained by contacting the Commissioner of Campaign Finances and Practices, P. O. Box 39, Capitol Station, Helena, Montana 59601, or calling (406) 449-2942.

INDEX

		Page
I.	Introduction	1
II.	Administration	
	Budget	5
	Staff	6
	Contracted Services	6
III.	Administrative Action	
	Implementation	7
	Election Law Revision	7
	Election Related Performance	7
	Enforcement	10
IV.	Legal Action	11

The Big Sky Country

COMMISSIONER OF
CAMPAIGN FINANCES AND PRACTICES

JOHN N HANSON
COMMISSIONER
CAPITOL STATION
HELENA MONTANA 59601
(406) 449-2942

July 1977

To the Governor, Legislature, and Citizens of the State of Montana:

The Campaign Practices Act of 1975 was enacted by the Legislature as a means of restoring and maintaining public confidence in candidates and identifying money influence in politics. To this end the Office of the Commissioner of Campaign Finances and Practices was established and empowered, in fact mandated, to implement, administer, and enforce the Act.

Under the provisions of the Act, the Office of the Commissioner of Campaign Finances and Practices is directed to prepare and publish rules and regulations, reporting forms, and a manual prescribing a uniform system for accounts. The office is to make filed reports available for public inspection and to publish and provide for the wide public dissemination of summaries of filed reports. It is to retain these reports for a period of ten years and to prescribe a system for county clerk and recorders to do the same. Administratively, it is mandated to investigate all alleged violations; all reports and statements filed; all failures to file; and, upon the complaint of any individual, any other alleged violation of the election laws. Additionally, the office is empowered to prosecute any alleged violations of the election laws.

This list of powers and duties conferred upon the office is by no means exhaustive; indeed, the description is conservative. The administrative duties over the prescribed area are as great as any other branch of state government, while the enforcement responsibilities are equal to those of a county attorney.

It is when one contrasts these theoretical powers and duties with the limitations of fiscal reality that the capabilities of the office become apparent.

The accomplishments and deficiencies experienced in the attempts to fully effect the provisions of the Campaign Practices Act during the past fiscal year were innately tied to the availability of funds and staff. As was the case during Fiscal Year 1976, the resources authorized by the 1975 Legislature for Fiscal Year 1977 were less than adequate to accomplish the mandates of the Act.

Administratively, funds were not available to adequately investigate complaints, alleged violations, reports and statements filed, or failures to file required statements and reports. The enforcement functions of the office were, therefore, very limited, for enforcement could not be initiated unless it was first administratively determined and alleged that a violation had occurred.

The inability of this office to fully implement, administer, and enforce the Act during the past biennium obviated the need for an increased budget request. Such a budget request was prepared and submitted; however, it was rejected by the Legislature[1] and the Governor's Office of Budget and Program Planning,[2] despite the fact that the Legislative Fiscal Analyst[3] fully supported and recommended its approval.

At first glance, their action appears to be a simple case of "holding down the level of state bureaucracy"; however, the Governor's Office and the Legislature were well apprised of current functioning capabilities of this office. There existed two distinct options-i.e., whether to approve a budget correlating the written intent of the Statute or whether to approve one establishing an unwritten intent.

This dichotomy between the requirements of the 1975 Campaign Practices Act and the present will to enforce it is an ironic one. [illegible] abuses of Watergate and the financial fiasco of Montana's 1972 general election recede in memory (or at least in the memory of elected public officials), the purposes and aims of the Act seem less urgent and worthy of support. Indeed, this apparent mistaken notion that their action was motivated by public interest is shamelessly held.

---

[1] House Bill No. 145
[2] Montana Executive Budget 1977-1979
[3] 1979 Biennium Budget Analysis presented to the 1977 Legislature

Beyond the bare description of facts, the ensuing report is intended to analyze, perhaps justify, the accomplishments of the office, as well as its shortcomings--insofar as self-analysis permits. The experience of two years of operation have offered insights into these areas and the following is submitted for your consideration.

Respectfully,

John N. Hanson

JOHN N. HANSON
Commissioner

ADMINISTRATION

Budget Data

Appropriations by the 44th Legislature for Fiscal Year 1977 totaled $80,435. Added to this figure was a budget transfer of $2,025 from Fiscal Year 1976.

The following is a summary of those funds as appropriated and expended during Fiscal Year 1977.

	Budgeted	Expended
Full Time Equivalent Employees	4.0	4.0
Salaries	$52,588	$52,723.89
Employee Benefits	6,331	6,362.93
Contracted Services	10,000	12,162.78
Supplies	1,000	696.99
Printing	3,336	3,203.08
Telephone	1,320	1,479.60
Postage	1,500	993.58
Travel	1,900	342.20
Rent	4,225[4]	3,643.55
Repair and Maintenance	260	286.87
Equipment	-0-	25.40
Totals	$82,460	$81,920.87[5]

Based upon the experience of the prior fiscal year, it was apparent that the appropriation for Fiscal Year 1977 would be insufficient to fully realize the extensive dictates of the campaign finance and practice statutes. As a result, priorities were selected and the authorized funds were budgeted accordingly. Primary emphasis was focused on the education of candidates and their compliance with the reporting requirements.

Expenditures associated with education accounted for approximately 63% of the expended budget, while those associated with compliance utilized nearly 23%. The balance was expended to meet the costs associated with office space, equipment, supplies, and maintenance and to retain contracted legal defense.

---

[4] Includes $2,025 budget transfer from FY 1976.
[5] Unexpended balance of $539.13 returned to general fund.

Staff

Pursuant to the provisions of section 23-4786(2), R.C.M. 1947, a staff of 3 full-time equivalent employees were utilized to execute the operations of this office during Fiscal Year 1977.

The staff, which was employed during FY '76 and continued through FY '77, consists of:

> Karen A. Kelly, Helena - secretary, Administrative Assistant II, at a fiscal yearly salary of $10,172.
>
> Jack J. Lowe, Helena - lawyer, Administrative Officer II, at a fiscal yearly salary of $14,571.
>
> Arlene M. Sparrow, Helena - Clerk/Typist II, at a fiscal yearly salary of $6,900.

Insufficient staff was certainly the most significant cause and effect factor of this office's inability to accomplish the many additional statutory responsibilities placed upon it. Of the total available man-hours, nearly all were utilized within the priority areas of candidate education and compliance, with each consuming approximately 70% and 20% respectively.

Contracted Services

Funds to retain the services of special investigators and prosecutors to enforce the Campaign Practices Act were made available by the 1975 Legislature. However, because available staff was inadequate to meet the work-load generated by the 1976 general elections, those funds were utilized for contracting services to supplement the permanent staff.

Review of the campaign finance reports was contracted to Galusha, Higgins and Galusha, a Helena-based public accounting firm. The agreement, contracted at a price of $3,095, provided invaluable assistance in the processing of the filed reports and afforded the opportunity to accomplish the Act's goal of informing the electorate before the election.

Expenditures were also made to retain the Great Falls-based firm of Graybill, Ostrem, Warner and Crotty. The firm was retained to represent this office in a lawsuit filed against it in October of 1976. Fees paid to date total $9,032. The specifics of the lawsuit are discussed on page 11 of this report.

Implementation

The implementing steps effected during Fiscal Year 1976 were continued through Fiscal Year 1977. In light of the ongoing primary and general elections of 1976, no changes were made to the previously-published forms, manuals, rules, and advisory opinions. It was our belief that those implementing and administrative procedures effected during the prior fiscal year provided the means to maintain the basic spirit and intent of the Campaign Practices Act. Although there were occasional areas in which changes might have proven beneficial, it was felt that revisions during the pressure of the ongoing elections would only generate further confusion. Certain changes, however, are contemplated in the near future, along with a review of the total scope of the Act and its administration.

Election Law Revisions

The office did participate in the revision of a number of general provisions of the election laws, and in specific, changes in Chapter 47. The nature of those changes by the 1977 Legislature was recodification. Other changes were, for the most part, minor ones, with the exception of House Bill 185 which deserves further discussion.

House Bill 185, as enacted, removes certain candidates for the office of school district trustee from the reporting requirements of Chapter 47. The provisions exempt candidates in second- and third-class districts, first class districts in counties having a population of less than 15,000, and county high school districts having a student enrollment of less than 2,000. Candidates from those geographical areas which have traditionally had hotly-contested and well-financed races for the office of trustee will, however, still be within the reporting requirements of the law.

Election Related Performance

Although the 1976 primary elections were the first elections in which the office was involved, the general elections in November of 1976 and the local and school district elections of early 1977 provided the most important experience to date of the effectiveness of the Campaign Practices Act and this office. There is no reason to think that those elections were not typical of those that will be held in the future.

An extended discussion of the 1976 general election and the local and school district elections of 1977 is, therefore, justified. The following is a statistical breakdown of those elections.

	# of candi-dates	# of commit-tees	# of is-sues	# of filed state-ments	reports
1976 Elections					
statewide	14	15	6	0	116
state district	261	520	0	0	2,343
local	0	50	180	100	8
1977 Elections					
co. & municipal	1,416	51	*	2,934	323
school district	77	10	15	174	15

Of the candidates for state-district office and the committees supporting or opposing them in the 1976 general elections, none filed less than three reports; statewide candidates and committees filed at least four. Thus, an estimated 2,467 reports (all of which required reviewing and most of which required corrections of one sort or another) were generated in a span of less than four months.

A complete statistical breakdown of the money collected and spent in those campaigns has not been compiled; but it is worthwhile to note that individual amounts spent by state-district candidates ranged from a low of less than $20 to a high of $5,800, and amounts expended by statewide candidates and ballot issue committees ranged from $235 to $307,000.

The statistical variance characterized by the 1977 elections is due to the fact that candidates for local (school, city, & county) office were not required to file campaign finance reports unless their total contributions and expenditures exceeded $500. The bulk of those candidates and committees, therefore, did not file such reports; however, due to the large number of total candidates and committees, the actual number of reports received and reviewed was by no means insignificant. Candidates and committees filing such reports totaled 170. Of those, 52 did not actually exceed the $500 level but, for one reason or another, reported anyway, requiring review of approximately 3,108 statements and 340 reports

---

* it is anticipated that nearly every county (56) and municipality (124) held a ballot issue election in conjunction with their general election; of these, however, we were only aware of about 10 such issue elections. These were brought to our attention through complaints that individuals filed against political committees that organized to support or oppose those issues.

Expenditures by the individual local candidates and committees ranged from a low of zero to a high of approximately $9,000, a figure considerably in excess of the highest figure for a state-district candidate.

Primarily, our review of filed reports consisted of a cursory desk review. No attempts were made to authenticate the completeness and accuracy of the information provided. Furthermore, the superficial reviews were limited to those reports filed by candidates and their committees. Too few resources were available to review reports filed by the numerous political party and multi-candidate committees.

With reference to the information that was provided, the review of the reports filed by candidates and committees in connection with the 1976 and 1977 elections leads us to no new conclusion other than that expressed in the previous annual report: there is much room for improvement.

At the same time, the shortcomings were not severe. An accurate generalization would be that most reports contained errors of detail and of arithmetic, and that most could have been improved upon by the most moderate of efforts on the part of their preparers. Matters of this category were not particularly serious, but the requirements of the statute did not allow the office to ignore obvious errors. The correction of errors and the correspondence which they generated drained the resources of the office in terms of time and money--time and money which might have been better spent elsewhere.

The experience of this office in the past biennium continues to point up the need for additional staff assistance in performing its election related duties. The need for a full-time employee to assist in the areas of education, review, verification, and public dissemination of filed information is more acute than ever; but the constraints of the budget approved for the office by the 1977 Legislature will not allow such--a situation which is of primary concern to us.

Enforcement

ORDERS OF NON-COMPLIANCE. A smaller but more serious category of shortcomings resulted from the failure of candidates or committees to file reports on time. These failures were dealt with by use of the Order of Non-Compliance authorized by section 23-4787, R.C.M. 1947. During the period under discussion, fifteen Orders of Non-Compliance were issued. Persistence resulted in eventual success without seeking civil action, a remedy to which the office intends to resort with greater frequency.

COMPLAINTS. During the 1976 and 1977 elections, a number of complaints were received. A precise figure is difficult to give, since the "complaints" took many forms other than that of the formal method specified in administrative rule (MAC 44-3.10(6)-S1035). The seriousness or frivolity of the complaint had little or nothing to do with its formality. Many formal complaints alleged violations that did not happen to be against the law; many more serious matters were informally brought to our attention by telephone call; and in some instances, action was initiated upon our own motion, without complaint. None of these complaints led to ultimate legal action. They were dealt with by negotiation or education as to the requirements of the statutes.

One rather striking generalization about the complaints received is that practically all of them involved alleged violations of, or irregularities in, either the "corrupt-practices" statutes or in the statutes prescribing the administrative details of the conduct of elections. Practically none involved irregularities in the reporting of financial transactions; in other words, the Campaign Finances Act itself. The experience gained in dealing with these problems, and the fact that certain ones tend to recur, will be of use in our pending review of the election laws.

LEGAL ACTION

In September of 1976 a lawsuit was filed against this office to determine the constitutional validity of section 23-4744, R.C.M. 1947, "Contributions from corporations, public utilities, and others." The impetus for the action was a statewide initiative measure. The measure attracted the interest of several corporations and public utilities, but the law appeared to prevent them from contributing funds to publicly influence the results of the election.

Counsel was retained to represent this office in the court action. The statute was declared to be unconstitutional in the United States District Court,[6] and appeal is currently pending in the Ninth Circuit Court of Appeals.[7] The enforcement of the corporate contribution prohibition is, therefore, currently rendered unenforceable, pending the outcome of our appeal.

A very similar question has also been litigated in Massachusetts; however, its Supreme Judicial Court found for the state and upheld the validity of their similar statute.[8] The unsuccessful parties in Massachusetts have appealed the decision to the Supreme Court of the United States, where it is awaiting a hearing in late 1977 or early 1978. Since the outcome of that suit will, as a practical matter, determine the validity of the Montana law as well, this office, together with the Montana Attorney General, has determined to make an appearance in that case by the way of a brief amicus curiae.

---

[6] C&C Plywood Corporation v. Hanson, 420 F. Supp. 1254 (D. Mont. 1976)

[7] No. 76-3118 (9th Cir. 1976)

[8] First National Bank of Boston v. Attorney General, ____ Mass. ____, 359 N.E.2d. 1262 (1977)